

together with the requisite petition fee of \$130.00. At the time of the filing of the initial license request, a corresponding U.S. application had not yet been filed. However, the undersigned erroneously believed that the corresponding U.S. application was commonly-assigned application Serial No. 09/147,130, and so stated in the license request.

2. A supplement to the original petition dated June 27, 2000, together with declarations of Anthony Burford and Watson McMunn.
3. A second supplemental to the original petition dated November 27, 2000, informing Licensing and Review that the undersigned's prior indication that the corresponding U.S. application is application No. 09/147,130 was in error, and that the correct application No. is 09/508,661.

A decision on the license request was subsequently mailed on January 4, 2002.

The Decision of January 4, 2002

In the decision dated January 4, 2002, the Petitions Examiner refused applicants' initial petition on the ground that (1) the petition does not include a statement that the subject matter in question was not under a secrecy order at the time of filing abroad, and that it is not currently under a secrecy order, and (2) that the alleged "two year" time span is not indicative of the license being diligently sought.

The refusal of the license request is respectfully traversed and favorable reconsideration sought for the reasons set forth below.

Supplemental documentation submitted herewith

Applicants submit herewith in further support of the request for license declarations of Anthony Burford and James Hellwege.

Mr. Burford confirms that the subject matter in question was not under a secrecy order at the time of the filing of the foreign patent applications, and is not now under a secrecy order. This fact is confirmed by the grant of a foreign filing license on June 8, 2000 in connection with U.S. application No. 09/508,661. Mr. Burford also confirms that the submission of declarations of both himself and Mr. McMunn (submitted on June 27, 2000) was diligently undertaken.

The undersigned also confirms that the obtaining of the declarations of Mr. Burford and Mr. McMunn was diligently undertaken, as was the filing of the request for license, and that any delay in seeking the license during 1999 was inadvertent and not for purposes of delay. The undersigned further confirms that it was an unintentional error to initial state that the license request pertained to application No. 09/147,130, with the original license request instead pertaining to application No. 09/508,661.

In view of the above, it is clear that the delay in seeking the license is not in fact almost 2 years. The paper of November 27, 2000 to which the Examiner refers merely seeks to clarify the identity of the corresponding U.S. patent application, with all other

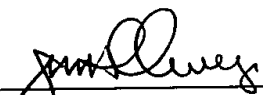
appropriate supporting documentation having been filed by June 27, 2000, and the original license request having been filed on December 30, 1999.

In view of the above facts, and the presentation of the additional documentation provided herewith, the grant of the requested license is believed proper and is earnestly requested.

Applicant respectfully petitions under the provisions of 37 CFR 1.136(a) and 1.17 for a four-month extension of time in which to respond to the Examiner's Official Action. A check in the amount of \$1440.00 is attached hereto for the extension of time.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BY: 
James W. Hellwege
Registration No. 28,808

Birch, Stewart, Kolasch & Birch
P.O. Box 747
Falls Church, Virginia 22040
703-205-8000
Dated: July 5, 2002

Attachments: Declaration of Anthony Burford
Declaration of James Hellwege



PATENT
3920-0103P

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Sachetto et al

Serial No. 09/508,661

Attn: Licensing and Review

Filed: May 26, 2000

For: XANTHAN GUM AND HPMC FOR THE
TREATMENT OF IBD

RECEIVED
JUL 11 2002
TECH CENTER 1600/2900

DECLARATION OF JAMES HELLWEGE

I, James W. Hellwege, do hereby state and declare as follows:

1. This declaration is submitted in support of a petition for grant of a retroactive foreign filing license in connection with subject matter which resides in the above patent application.
2. I am the U.S. attorney who has been assigned responsibility for the prosecution of the above U.S. patent application on behalf of the U.K. patent firm of W.H. Beck Greener & Co.
3. I received a letter of October 14, 1999 from Anthony Burford of W.H. Beck Greener & Co. informing me that, in his view, a retroactive foreign filing license was required in connection with subject matter residing in U.K. patent application Nos. 9720590.0 and 9725346.2, filed September 26, 1997 and November 28, 1997, respectively. I was also informed at that time that these two applications are the priority applications for PCT application PCT/GB98/02899, filed September 25, 1998. I was at

that time requested by Mr. Burford to attend to the filing of a petition for a retroactive foreign filing license.

4. Due to the press of other business and the holiday season, I was not able to attend to the preparation of the license request immediately. I received a reminder letter of December 11, 1998 from Mr. Burford regarding the license request. However, in the interim, an interference was declared by the U.S. Patent Office on November 9, 1998 in connection with another pending patent application for which I was responsible. My involvement in connection with the interference required major effort on my part during the next six months or so. Unfortunately, the request for foreign filing license was not docketed for any due dates within my firm at that time, and apart from Mr. Burford's reminder, no internal reminder of the need to attend to this matter occurred. To further complicate matters, upon my involvement in the interference, the file pertaining to the request for foreign filing license was inadvertently set aside and not re-discovered until later. As no corresponding U.S. application had been filed at that time based on the corresponding U.K. and PCT applications, the correspondence pertaining to the request for foreign filing license was not associated with any corresponding U.S. patent application file.

5. I again came upon the noted license correspondence file in December, 2000 upon reviewing various document files in my office. I immediately filed the initial license request dated December 30, 1999, and forwarded draft declarations to Mr. Burford and Mr. McMunn on January 20, 2000 for their review and execution. At that

time, I was under the mistaken impression that the noted U.K. and PCT applications corresponded to related U.S. patent application No. 09/147,130 (also being handled by my office). In fact, no corresponding U.S. application had yet been filed, as the U.S. national stage had not yet been entered in connection with PCT application PCT/GB98/02899. Such entry would not occur until March, 2000.

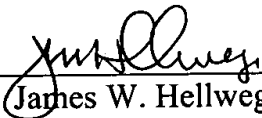
6. The executed declarations of Mr. Burford and Mr. McMunn were received by me and filed in the U.S. Patent Office on June 27, 2000.

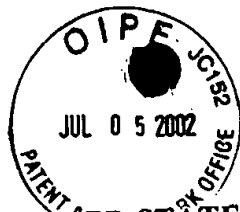
7. During November, 2000, upon checking upon the status of the license request, I became aware that the corresponding U.S. patent application was not in fact application No. 09/147,130, but was instead application No. 09/508,661. A letter correcting this error was filed on November 27, 2000.

8. At no time was any of the delay which occurred during 1999 in connection with the filing of the license request intentional or for purposes of delay. Such delay was solely the result of the file being inadvertently set aside and not again located until late in 1999, as well as the fact that the filing of the license request was not docketed for purposes of reminder. If in fact the license request had been docketed for purposes of reminder, and if the file had not inadvertently been set aside and not located again until December, 1999, then the license request which was filed on December 30, 1999 would have been filed much more expeditiously and any delay associated therewith much shorter.

9. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine and/or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of any application or patent issuing therefrom to which this statement is directed.

Dated: July 5, 2002

Signed: 
James W. Hellwege



PATENT
3920-0103P

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Sachetto et al

Serial No. 09/508,661

Attn: Licensing and Review

Filed: May 26, 2000

For: XANTHAN GUM AND HPMC FOR THE
TREATMENT OF IBD

RECEIVED
JUL 11 2002
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SECOND DECLARATION OF ANTHONY F. BURFORD

I, Anthony F. Burford, do hereby state and declare as follows:

1. This declaration is submitted in further support of a petition for grant of a retroactive foreign filing license in connection with subject matter which resides in the above patent application.

2. I received on January 25, 2000 a letter from James W. Hellwege dated January 20, 2000 together with draft declarations for both myself and Watson McMunn directed to certain facts pertaining to the request for a retroactive foreign filing license for subject matter residing in UK application Nos. 9720590.0 and 9725346.2 as well as corresponding PCT application PCT/GB98/02899. Mr. McMunn's declaration was forwarded by me to Mr. McMunn on February 1, 2000 and executed by him on February 4, 2000. His executed declaration was received in our offices on February 14, 2000.

3. I was absent from the office during much of the latter part of February, 2000 due to an eye operation and vacation. I deferred attending to the review and execution of my declaration due to the approaching March 26, 2000 deadline for entry into the U.S. national phase of the above application based on PCT application PCT/GB98/02899. My executed declaration dated March 12, 2000 was forwarded to Mr. Hellwege on March 14, 2000 together with our instructions for entry into the U.S. national phase for the above application by that date.

4. The decision to enter the U.S. national phase from PCT application PCT/GB98/02899 was deferred until the end of the period for entry into the U.S. national phase to permit review of the International Preliminary Examination Report which issued on January 28, 2000 in connection with the corresponding PCT application. This report required detailed and thorough consideration and review, and the applicants' comments in connection therewith were not received until March 3, 2000. At that time a decision was finally made to enter the U.S. national phase.

5. The subject matter disclosed in the above-mentioned GB and PCT patent applications is not now under a secrecy order, nor was the subject matter under a secrecy order at the time of filing of the noted GB and PCT patent applications.

6. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine and/or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false

statements may jeopardize the validity of any application or patent issuing therefrom
to which this statement is directed.

Dated:

July 3, 2002

Signed


Anthony F. Burford